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TO THE PRINCIPAL MATTERS CONTAINED

IN

VOLUME VII.

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19. An information in the admiralty for a forfeiture must contain a substantial statement of the offence. A general reference to the provisions of the statute is not sufficient. If the information be defective in that respect, the defect is not cured by evidence of the facts omitted to be averred in the information. The decree must be *secundum allegata*, as well as *secundum probata*. *Schooner Hoppet v. United States*, 389
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Wherever a corporation aggregate is acting within the scope of the legitimate purposes of its institution, all parol contracts made by its authorized agents, are express promises of the corporation; and all duties imposed on them by law, and all benefits conferred at their request, raise implied promises, for the enforcement of which an action lies. *Bank of Columbia v. Patterson*, 299

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1. A copy of the transcript of the record obtained from the clerk of the Supreme Court of the United States is not a part of the taxable costs of suit to be recovered by one party against the other; but the party who requests the copy must pay the clerk for it. *Caldwell v. Jackson*, 276
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4. A fraudulent recommendation will subject the person, giving it, to the damages sustained by the person trusting to it. *Id.* 70
5. A misrepresentation of the solidity of a mercantile house made under a mistake of the fact, without any interest or fraudulent intention, will not sustain an action, although the Plaintiff may have sustained damage by reason of such misrepresentation. *Id.* 70
6. A merchant who indorses the bills of another upon the faith of the guaranty of a third, cannot (upon the insolvency of the principal debtor and of the guaranty) resort to a trust fund created by the principal debtor for the indemnity of the guaranty for the amount which the guaranty should pay. But a person for whose benefit a trust is created, who is to be the ultimate receiver of the money, may sustain a suit in equity to have it paid directly to himself. *Id.* 71

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The statute of descents in Maryland has not declared how an intestate estate shall descend, which was derived to the intestate from his half-brother, or from his brother of the whole blood, or from his son, or daughter, or from his wife; but such estates are left to descend at common law. *Barnitz v. Casey*, 456

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happen, it devolves upon his heir, and so from heir to heir, until the contingency happen, when it vests absolutely in him only who can *then* make himself heir to B. the executory devisee: and although A. be the heir at law of B. yet the executory devise thus devolving on him, is not merged in the preceding estate, but, on the death of A. devolves to the next heir of B. *Barnitz v. Casey*, 456

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1. Courts of chancery have concurrent jurisdiction with Courts of law, in cases of dower, especially where *partition*, *discovery*, or *account*, is prayed; and in cases of sale where the parties are willing that a sum in gross should be given in lieu of dower. *Herbert v. Wren*, 370
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1. The evidence of that necessity which will excuse a violation of the embargo laws, must be very clear and positive. *Brig James Wells.* 22
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3. The *2d section of the act of 25th April*, 1808, did not require a permit to lade any vessel; nor authorize the forfeitutre and condemnation of the vessel or cargo for lading without the inspection of a revenue officer; the only penalty for such lading being the denial of a clearance. *Id.* 52
4. The departure of a vessel from the wharf of a port, and proceeding a mile and a half therefrom, with intent to go to sea, is not a departure from the port, within the meaning of *the 3d section of the supplementary embargo act of January 9th*, 1808, if the vessel had not actually gone out of the port before seizure. *The sloop Active* 100
5. A vessel which has proceeded to a foreign port, contrary to *the embargo act of January 9*, 1808, is liable to be seized upon her return, although that act gives a penalty of double her value in case she should not be seized. *The brig Eliza*, 113
6. Upon an indictment for putting goods on board a carriage, with intent to transport them out of the United States contrary to *the act of January 9*, 1809, the punishment of which offence is a fine of four times the value of the goods, it is not necessary that the jury should find the value of the goods. *United States v. Tyler*, 285
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Upon executing a writ of enquiry in Virginia, in an action of *assumpsit* upon a promissory note, it is necessary to produce a note corresponding with that stated in the declaration; but it is not necessary to prove the note. *Sheehy v. Mandeville*, 208

EQUITY.

1. He who has equal equity may acquire the legal estate, if he can, so as to protect his equity. *Fitzsimmons v. Ogden*, 2
2. A mortgage of land, made by one who has a legal and equitable title to a moiety of the property which the mortgage purports to convey, passes only his legal right, although he had a power, from the person who held the residue of the legal but not of the equitable estate in the land, to sell and convey his right also; the mortgagor not having affected to convey any part of it under his power from the other person, although his deed purported to mortgage the whole; and the equitable title not being in the person who gave the power. *Shirras v. Caig and Mitchell*, 34
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same parties or privies. *Wood v. Davis*, 271
12. Hearsay evidence is incompetent to establish any specifiec fact which is, in its nature, susceptible of being proved by witnesses who speak from their own knowledge. Claims to freedom in Maryland are not exempt from that general rule. *Mima Queen v. Hepburn*, 290
13. Upon general counts a special agreement executed may be given in evidence. *Bank of Columbia v. Patterson*, 299
14. In a case of warranty and indemnity a judgment against the person to be indemnified, if fairly obtained, especially if obtained on notice to the warrantor, is admissible evidence in a suit against him on his contract of indemnity. *Clark v. Carrington*, 308
15. Probable cause means less than *prima facie* evidence. *Locke v. United States*, 339
16. In a prosecution against a vessel for violating a law of the United States it is not necessary to adduce positive testimony of the identity of the vessel. *The schr. Jane*, 363
17. A paper purporting to be a record certified by the clerk to be "*truly taken from the record of proceedings*" of his Court, with the proper certificate of the chief judge, &c. is admissible evidence. *Ferguson v. Harwood*, 408
18. But if the paper purport to be a mere transcript of minutes extracted from the docket of the Court, it is not evidence *Id.* 408
19. It need not appear by the record of naturalization, that all the requisites, prescribed by law for the admission of aliens to the rights of citizenship, have been complied with. *Starke v. Chesapeake In. Co.* 420
20. *Semb:* That the judgment of the Court admitting the alien to become a citizen, is conclusive that all the pre-requisites have been complied with, or that parol proof may be received in aid of the record. *Id.* 420
21. See *North Carolina*, 471
22. An exemplification of a judgment of another state, properly authenticated, is conclusive evidence of the debt; consequently *nil debet* is not a good plea to an action of debt upon such a judgment. *Mills v. Duryee*, 481
23. Bills of exchange taken up by the drawer, with damages and costs of protest, are admissible evidence in an action, for money paid, laid out and expended by the Plaintiff, against the drawee of the bills who was bound to honor them. *Riggs v. Lindsay*, 500
24. The usage of trade may be proved by parol, although such usage originated in a law or edict of the government of the country. *Livingston v. Md. In. Co.* 508
25. The record of a former judgment between the same parties, upon the same cause of action, may be given in evidence upon *non assumpsit*. *Young v. Black*, 565
26. See *Demurrer*, 1, 2, 3, 565

EXECUTION.

1. See *Error*, 4, 278.
2. See *Bond*, 2, 288

EXECUTORY DEVISE.

See *Devise*, 2, 456

F.

FACTOR.

See *Agent*, 3, 500

FAIRFAX, LORD

1. Lord Fairfax, at the time of his death, had the absolute property, seizen, and possession of the waste and unappropriated lands in the Northern Neck of Virginia. *Fairfax v. Hunter*, 603

2. See *Alien*, 1, 603
3. The commonwealth of Virginia could not grant the unappropriated lands in the Northern Neck until its title should have been perfected by possession; and the British treaty of 1794 confirmed the title to those lands in the devisee of lord Fairfax. *Fairfax v. Hunter*, 603

FEES.

1. Each party is liable to the clerk for the fees due to him from each party respectively, and the clerk may have an attachment to compel the payment thereof. *Caldwell v. Jackson*, 276
2. See *Costs*, 1, 276

FIRE.

See *Alexandria*, 396

FISHING VESSEL.

A licensed fishing vessel is liable to forfeiture [*under the 32d section of the act of the 18th of February, 1793, for enrolling and licensing vessels*] for sailing laden with goods, with intent to carry them to another place, without a license therefor, although the goods should be wholly of domestic growth and manufacture, and not liable to any duty. But such cargo is not liable to forfeiture unless it belong to the master, owner, or a mariner of the vessel. *The sloop Active*, 100

FOREIGN SENTENCE.

See *Admiralty*, 5, 6, 7, 8, 424

FOREIGN VESSEL.

See *Admiralty*, 13, 349

FORFEITURE.

1. See *Fishing vessel*, 100
2. See *Evidence*, 16, 363
3. See *Admiralty*, 18, 389

FRAUD.

1. On a question of fraud the remedy at law is complete, *Russel v. Clark*, 69
2. See *Credit, letter of* 4, 70
3. A promise to pay a sum of money as a compensation to the Plaintiff for the injury done him by the misconduct of the Defendant in obtaining a patent in his own name for land which he ought to have patented in the name of the Plaintiff, and in preventing the Plaintiff from obtaining a patent in his own name, and in consideration of the Defendants having procured the patent to be issued to himself, *is a contract for the sale of land*, within the statute of frauds, and must be in writing. *Hughes v. Moore*, 177

FREEDOM.

See *Evidence*, 11, 12, 271, 290

FREIGHT.

The underwriters upon a cargo are not liable for freight *pro rata itineris*, to the owner of the vessel who is also owner of the cargo insured, in a case where the vessel and cargo were captured, the cargo abandoned to the underwriters as a total loss and by them accepted, the loss paid, the cargo condemned, restored upon appeal, and the proceeds of the cargo paid over to the underwriters. Freight *pro rata itineris* is not due unless the owner of the cargo voluntarily agree to receive it at a place short of its ultimate destination. *Caze and Richaud v. Balt. In. Co.* 358

G.

GENERAL RULE.

See *Counsellors*, 1, 2, 1, 99

GRANT.

1. See *Equity*, 8, 354
2. See *North Carolina*, 472

GUADALOUPE.

See *Admiralty*, 4, 402

GUARANTY.

See *Credit, letter of* 69

H.

HEAR-SAY.

See *Evidence*, 12, 290

I.

INDEMNITY.

See *Evidence*, 14, 308

INDIANS.

See *Constitution*, 164

INDICTMENT.

See *Embargo*, 6, 285

INDORSEMENT.

See *Evidence*, 6, 160

INDORSER.

1. See *Assumpsit*, 1, 273
2. See *Custom of merchants*, 273
3. In a suit against the maker of a promissory note, by an indorser who has been obliged to take it up, the Plaintiff must produce the note upon the trial. *Morgan v. Reintzel*, 273

INJUNCTION.

See *Jurisdiction*, 8, 279

INSOLVENT.

1. See *Credit, letter of* 7, 71
2. See *Columbia*, 1, 168

INSTRUCTION.

See *Admiralty*, 20, 590

INSURANCE.

1. The discharge of underwriters from their liability, in case of taking on board an additional cargo not authorized by the policy, depends, not on any supposed increase of risk, but wholly on the departure of the insured from the contract of insurance. The consequences of such a violation of the contract are immaterial to its legal effect, as it is, *per se*, a discharge of the underwriters; and the law attaches no importance to the degree, in cases of voluntary deviation. Necessity alone can sanction a deviation in any case; and that deviation must be strictly commensurate with the *vis major* producing it. *Md. In. Co. v. Le Roy*, 26
2. A policy of insurance on a vessel "*at and from*" *an island*, protects her in sailing from port to port of the island to take in a cargo. *Dickey v. Balt. In. Co.* 327
3. See *Equity*, 7, 332
4. See *Freight*, 358
5. See *Alexandria*, 396
6. There cannot be a total loss of a cargo consisting of *memorandum articles of only one species*, such as hides. Nor are the underwriters liable for salvage upon such articles, under the clause which authorizes the insured to labor and travel for the preservation of the cargo, unless, perhaps, in a case where the salvage may

have prevented an actual total loss of the cargo. *Biays v. Chesapeake In. Co.* 415

7. The length of time a vessel may wait to take in her cargo, without discharging the underwriters does not depend on the usage of the trade. *Oliver v. Md. In. Co.* 487

8. The danger which will justify a vessel in remaining in port a long time, without discharging the underwriters, must be obvious, immediate, directly applied to the interruption of the voyage and imminent; not distant, contingent and indefinite. *Id.* 487

9. If, according to the usage of the trade, a vessel be permitted to go from one port to another to collect her cargo, and she unnecessarily exhaust, at one port, the whole time allowed by the usage of the trade to complete her cargo, she cannot go to the other port without being guilty of such a deviation as will avoid the policy. *Id.* 488

10. What is a reasonable apprehension of danger, is a question of law to be decided by the Court. *(Quere?) Id.* 488

11. To constitute a representation (in making insurance) there should be an affirmation or denial of some fact; or an allegation which would plainly lead the mind to the same conclusion. *Livingston v. Md. In. Co.* 506

12. If, by the usage of the trade insured, it be necessary that certain papers should be on board, the concealment of those papers cannot affect the Plaintiff's right to recover upon the policy. *Id.* 507

13. In general, concealment of papers amounts to a breach of warranty. *Id.* 507

14. See *Domicil*, 1, 2, 507

15. If the letter, submitted to the underwriters, ordering the insurance, refer to another letter previously laid before them, which letter contained information that the vessel had permission to trade to the Spanish colonies, the underwriters are bound to notice that fact, and to know that the vessel will take all the papers necessary to make the voyage legal. *Id.* 508

16. The usage of trade may be proved by parol, although such usage originated in a law, or edict of the government of the country. *Id.* 508

17. The question whether abandonment were made in due time, is not a question of fact to be exclusively left to the jury, but to be decided by them under the direction of the Court. *Id.* 508

18 No acts, justifiable by the usage of the trade, and done by the Plaintiffs to avoid confiscation under the laws of Spain, can avoid the policy. *Id.* 509

19. If the Plaintiffs do any act which increases the risk of capture and detention, according to the common practice of the belligerent, it may avoid the policy. It is not necessary that the risk, thus increased, should be the risk of *rightful* capture according to the law of nations. *Id.* 509

INTESTATE.

See *Descent*, 456

J.

JOINT OWNER.

1. See *Assignment*, 1, 308

2. If three joint owners of a cargo employ the master of the ship to sell it for them, and he afterwards become interested in the share of one of the joint owners, he cannot, in an action brought against him by the three joint owners to recover the amount of the sales, set off his share of that amount. *Young v. Black*, 565

JOINT TENANTS.

See *Limitations*, 1, 156

JUDGMENT.

1. If the original judgment be reversed, the reversal of the dependent judgment on the "*forthcoming bond*" follows of course; but a special *certiorari* is necessary to bring up the execution upon which the bond was given, so as to show the connexion between the two judgments. *Barton v. Petit and Bayard*, 288
2. A verdict "*for the Defendants* "*subject to the opinion of the* "*Court upon the points reserv-*"*ed*," does not authorize an absolute judgment for the Defendants unless the points reserved and the opinion of the Court thereon are stated on the record. *Smith v. Del. In. Co.* 434
3. *Nil debet* is not a good plea to an action on a judgment of another state. *Mills v. Duryee*, 481
4. A judgment between the same parties, on the same cause of action may be given in evidence upon *non assumpsit*. *Young v. Black*, 565

JURISDICTION.

1. The Courts of the United States have no common law jurisdiction in cases of libel against the government of the United States. But they have the power to fine for contempts, to imprison for contumacy, and to enforce the observance of their orders, &c. *United States v. Hudson & Goodwin*, 32
2. See *Discovery*, 1, 69
3. See *Dower*, 1, 370
4. The Supreme Court of the United States has not jurisdictton by writ of error, in a civil cause which has been carried up from the District Court to the Circuit Court by writ of error. *United States v. Goodwin*, 108
United States v. Gordon, 287
5. See *Admiralty*, 3, 112
6. A public vessel of war of a foreign sovereign at peace with the United States coming into our ports, and demeaning herself in a friendly manner, is exempt from the jurisdiction of the country. *Schooner Exchange v. M'Faddon*, 116
7. Upon a writ of error to the Circuit Court for the district of Columbia, this Court has no jurisdiction, if the sum awarded be less than 100 dollars, although a greater sum may have been originally claimed. *Wise v. Col. Turnpike Co.* 276
8. A state Court has no jurisdiction to enjoin a judgment of the Circuit Court of the United States *M'Kim v. Voorhies*, 279
9. A French tribunal at Guadaloupe had jurisdiction of property seized on the high seas for breach of the Milan decree, and carried into the Dutch part of the island of St. Martins, and there sold by order of the Dutch governor of St. Martins, before condemnation, without any authority from the French tribunal at Guadaloupe. *Williams v. Armroyd*, 424
10. See *Mandamus*, 504
11. The Circuit Court of Tennessee, as a Court of equity, cannot award a writ of *habere facias possessionem*. *Wallen v. Williams*, 602

JUROR.

1. After a juror is sworn no exception can be taken to him on account of his being an inhabitant of another county. *Mima Queen v. Hepburn*, 291
2. If a juror be challenged for favor, and, upon examination before the tryers, he declare that if the evidence should be equal he would give a verdict in favor of that party upon whom the burthen of proof lies, the Court, in the exercise of a sound discretion, ought to reject him, although the bias should not be so strong as to render it possitively improper to allow him to be sworn. *Id.* 291

JURY.

See *Admiralty*, 3, 112

L.

LAND.

1. The title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situated. *United States v. Crosby*, 115
2. See *Arbitration*, 2, 172
3. See *Fraud*, 3, 177
4. See *Descent*, 456
5. See *Devise*, 2, 456
6. See *North Carolina*, 471
7. See *Alien*, 1, *Fairfax*, 603

LETTER OF CREDIT.

See *Credit, letter of* 69

LIBEL.

1. In a count in a libel upon *the 50th section of the collection law of March 2d*, 1799, for unlading goods without a permit, it is not necessary to state the time and place of importation, nor the vessel in which it was made, but it is sufficient to allege that they were unknown to the attorney of the United States. *Locke v. United States*, 339
2. In a libel it is not necessary to negative any fact which constitutes the defence of the Claimant. *Brig Aurora*, 383
3. An information in the admiralty for a forfeiture must contain a substantial statement of the offence. A general reference to the provisions of the statute is not sufficient. If the information be defective in that respect, the defect is not cured by evidence of the facts omitted to be averred in the information. The decree must be *secundum allegata*, as well as *secundum probata*. *Schooner Hoppet v. United States*, 389
4. A libel for a forfeiture must be *particular* and *certain* in all the material circumstances which constitute the offence. *Brig Caroline*, 496
5. An informal libel, or information *in rem*, may be amended by leave of the Court. *Id.* 496
Schooner Anne, 570
6. See *Common law*, 32

LICENSE.

See *Fishing vessel*, 100

LIMITATIONS.

1. In order to avoid the plea of the statute of limitations to an action by joint tenants, it is necessary to show that all the Plaintiffs were under a disability to sue. *Marsteller v. M'Clean*, 156
2. A recital in a deed is good evidence to take a case out of the statute of limitations. *King v. Riddle*, 168
3. The Defendant to an attachment in chancery, in Virginia, may plead the statute of limitations without answer. *Wilson v. Kocntz*, 202
4. A Defendant, who removes from one county to another in Virginia, is not thereby prevented from pleading the statute of limitations, unless the Plaintiff has been, by such removal, actually defeated, or obstructed in bringing or maintaining his action. *Id.* 202
5. The exception in the Maryland statute of limitations in favor of "such accounts as concerns the "trade or merchandize between "merchant and merchant, their "factors and servants which are "not residents within this pro-"vince," applies to dealings between a merchant creditor residing out of Maryland and a debtor residing in Maryland. And in order to take the case out of the exception, it is not sufficient to aver that the creditor returned to, came, and was within the state of

Maryland after the cause of action accrued, and more than 3 years before bringing the suit. *Bond v. Jay*, 350

M.

MANDAMUS.

1. The power of the Circuit Courts of the United States to issue the writ of *mandamus* is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. *M'Intire v. Wood*, 504
2. If the Court below order the proceedings to be finally staid upon suggestion of the attorney for the United States in a case to which the United States are not a party, this Court will order a *mandamus nisi*, in the nature of a *procedendo*. *Livingston v. Dorgenois*, 577

MARTINIQUE.

See *Admiralty*, 4, 402

MARYLAND.

1. See *Evidence*, 12, 290
2. See *Limitations*, 5, 350
3. See *Descents*, 436

MASTER.

See *Post-master*, 242

MEMORANDUM.

See *Insurance*, 6, 415

MERCHANT.

1. See *Account*, 1, 147
2. See *Custom of merchants*, 273
3. See *Limitations*, 5, 350

MILAN DECREE.

See *Admiralty*, 5, 7, 424

MISTAKE.

See *Agent*, 2, 366

MITTIMUS.

In the district of Connecticut, the marshal may, upon an attachment for debt, without a *mittimus*, commit the Defendant to prison for want of bail. *Palmer v. Allen*, 551

MORTGAGE.

1. See *Equity*, 2, 24
2. See *Equity*, 6, 219

N.

NATIONAL CHARACTER.

See *Domicil*, 507

NATURALIZATION.

See *Evidence*, 19, 20, 426

NEW JERSEY.

See *Constitution*, 164

NIL DEBET.

See *Debt*, 481

NOMINAL PLAINTIFF.

See *Assignment*, 2, 152

NON-INTERCOURSE.

1. See *Admiralty*, 14, 356
2. See *Id.* 16, 18, 383, 389, 570

NORTHERN NECK.

See *Fairfax*, 603

NORTH CAROLINA.

1. By the laws of North Carolina and Tennessee, a deed for land in Tennessee, executed in North Carolina, by grantors residing there,

in the year 1794, proved in 1797 by one of the subscribing witnesses before a judge in North Carolina, and recorded in 1108, in the proper county in Tennessee, is valid, and may be given in evidence in ejectment. *Blackwell v. Patton*, 471

2. The first grant, from the state of North Carolina, upon an entry, is valid, although issued upon a duplicate warrant, the original being in the hands of the surveyor general; & although a subsequent grant issue upon the original warrant for other lands. *Id.* 472

O.

OBLIGOR.

See *Evidence*, 8, 206

ORPHAN'S COURT.

See *Account*, 2, 281

OUSTER.

See *Ejectment*, 1, 457

OYER.

Oyer of a deed set forth in the first count does not make that deed part of the record so as to apply it to the other counts in the declaration *Hughes v. Moore*, 177

P.

PARTITION.

See *Dower*, 1. 370

PAYMENT.

1. See *Bond*, 3, 572
2. See *Account*, 3, 575

PENALTY.

See *Embargo*, 5, 113

PLAT.

See *Deed*, 1, 35

PLEADINGS.

1. See *Limitations*, 1, 136
2. See *Id.* 2, 168
3. See *Discontinuance*, 176
4. See *Oyer*, 177
5. See *Abatement*, 1, 2, 3, 194
6. See *Limitations*, 4, 5, 202, 350
7. When issue is taken on the negligence of the post-master himself, it is not competent to give in evidence the negligence of his assistant *Dunlop v. Munroe*, 242
8. When it is intended to charge a post-master for the negligence of his assistants, the pleadings must be made up according to the case; and his liability then will only result from his own neglect in not properly superintending the discharge of their duties in his office. *Id.* 242
9. In order to make a post-master liable for negligence, it must appear that the loss or injury sustained by the Plaintiff was the consequence of the negligence. *Id.* 242
10. It is a good defence to an action upon an embargo bond that it was given for more than double the value of the vessel and cargo, and that the master was constrained to execute it by the refusal of a clearance. *United States v. Gordon*, 287
11. Upon a special contract executed on the part of the Plaintiff *indebitatus assumpsit* will lie for the price. *Bank of Columbia v. Patterson*, 299
12. See *Agreement*, 1, 2, 3, 4, 299
13. See *Corporation*, 299
14. Nil debet is not a good plea to an action of debt founded on a judgment of another state. *Mills v. Duryee*, 481
15. See *Set-off*, 565
16. Upon the issue of *non assumpsit* the Defendant may give in evidence the record of a former judg-

ment between the same parties on the same cause of action. *Young v. Black*, 565
17. See *Demurrer*, 1, 2, 565
18. See *Libel*.
19. See *Columbia*, I, 168

POINTS RESERVED.

See *Judgment*, 2, 435

POLICY.

1. See *Insurance*, 2, 327
2. See *Equity*, 7, 332

POST MASTER.

See *Pleadings*, 7, 8, 9, 242

PORT.

See *Embargo*, 4, 100

POWER.

See *Equity*, 2, 34

PRACTICE.

1. This Court will not re-hear a cause after the term in which it was decided. *Hudson v. Guestier*, 1
2. Only two counsellors shall be heard on each side of a cause, whatever be the number of points or parties. *General rule*, 1
3. If the counsel for the Appellant neglect to furnish the Court with a statement of the points of the case, the appeal will be dismissed. *Schooner Catharine*, 99
4. The rule to dismiss a writ of error for not filing a transcript of the record within the first six days of the term, does not apply to cases where the transcript shall have been filed before the motion to dismiss. *Bingham v. Morris*, 99
5. This Court will issue a commission to take new evidence in cases of admiralty. *Brig Jas. Wells*, 22 *Brig Clarissa Claiborne*, 107
6. The Courts of the United States may fine for contempts, imprison for contumacy, and enforce the observance of their orders. *United States v. Hudson*, 32
7. A nominal Plaintiff may dismiss a suit brought in his name by a creditor who has not an assignment of the cause of action. *Welch v. Mandeville*, 152
8. A Plaintiff may discontinue a count in his declaration, before verdict, and wave the issues joined thereon. *Hughes v. Moore*, 176
9. Oyer of a deed set forth in the first count does not make that deed part of the record so as to apply it to the other counts in the declaration. *Id.* 177
10. A Plaintiff who has declared jointly against two Defendants as being in custody, when in fact only one of the Defendants was taken on the *capias*, cannot abate his own action against the party not taken, unless authorized so to do by the return of the process against that party. *Barton v. Petit and Bayard*, 194
11. If the marshall of Virginia return that the Defendant is no inhabitant of the district of Virginia, the suit shall abate as to such Defendant. *Id.* 194
12. The Plaintiff, in Virginia, is not bound to *declare* until all the Defendants have appeared, or the suit be abated as to such as have not appeared. *Id* 194
13. In a suit against the maker of a promissory note by an indorser who has been obliged to take it up, the Plaintiff must produce the note upon the trial. *Morgan v. Reintzel*, 273
14. Each party must pay the clerk his fees for services rendered to each respectively; and the clerk's remedy is by attachment. *Caldwell v. Jackson*, 276

15. This Court will not *quash* an execution issued by the Court below pending the writ of error, if it be not a *supersedeas* to the judgment. *Wallen v. Williams*, 278
16. A writ of error issued in September may bear teste of the February term preceding, and may be returnable to the next February term, notwithstanding the intervention of the August term between the teste and return of the writ. *Blackwell v. Patton*, 277
17. Upon an indictment for putting goods on board a carriage, with intent to transport them out of the United States contrary to *the act of January* 9, 1809, the punishment of which offence is a fine of four times the value of the goods, it is not necessary that the jury should find the value of the goods. *United States v. Tyler*, 285
18. See *Jurisdiction*, 4, 108, 287
19. After a juror is sworn, no exception can be taken to him on account of his being an inhabitant of another county. *Mima Queen v. Hepburn*, 291
20. If a juror be challenged for favor, and upon examination before the *tryers*, he declare that if the evidence should be equal he should give a verdict in favor of that party upon whom the burden of proof lies, the Court, in the exercise of a sound discretion, ought to reject him, although the bias should not be so strong as to render it possitively improper to allow him to be sworn. *Id.* 291
21. See *Libel*.
22. See *Evidence*, 17, 18, 408
23. See *Judgment*, 2, 434
24. See *Mittimus*, 550
25. See *Mandamus*, 1, 2, 504, 577
26. See *Jurisdiction*, 11, 602
27. See *Promissory note*, 3, 208

PROBABLE CAUSE.

See *Evidence*, 15, 339

PROCEDENDO.

See *Mandamus*, 2, 577

PROCESS.

See *Abatement*, 1, 2, 194

PROCLAMATION.

See *Act of congress*, 1, 2, 382, 570

PROMISSORY NOTE.

1. See *Evidence*, 5, 6, 160
2. A note payable at sixty days cannot be given in evidence to support a count upon a note, which count does not state when the note was payable. The variance is fatal. *Sheehy v. Mandeville*, 208
3. Upon executing a writ of enquiry, in Virginia, in an action of assumpsit upon a promissory note, it is necessary to produce a note corresponding with that stated in the declaration; but it is not necessary to prove the note. *Id.* 208
4. The Plaintiff cannot give evidence that the variance was the effect of mistake or inadvertence of the attorney, and that the note produced was that which was intended to be described in the declaration. *Id.* 208
5. In a suit against the maker of a promissory note by an indorser who has been obliged to take it up, the Plaintiff must produce the note upon the trial. *Morgan v. Reintzel*, 273
6. The payment of the money by the indorser, after protest, is a good consideration for an *assumpsit*, on the part of the maker, to pay the amount of the note with costs of protest. *Id.* 278
7. The maker of a promissory note, payable to order, is, under the custom of merchants, liable to refund the amount of the note and costs of protest, to an indorser who has been obliged to take it up after protest. *Id.* 278

8. See *Consideration*, 2, 548

PROTEST.

See *Promissory note*, 7, 273

R.

RE-HEARING.

See *Practice*, 1, 1

REPRESENTATION.

See *Insurance*, 11, 506

REVENUE.

1. See *Fishing vessel*, 100
2. See *Libel*, 1, 339
3. See *Bond*, 3, 572

REVIVAL.

See *Act of congress*, 1, 2, 382, 570

RISK.

See *Insurance*, 19, 509

S.

SALE.

1. See *Fraud*, 3, 177
2. See *Equity*, 6, 218
3. Upon a sale of land at auction, if the terms be that the purchaser shall, within 30 days, give his notes with two good indorsers, and if he fail to comply within the thirty days, then the land to be resold on account of the first purchaser, the vendor cannot maintain an action against the vendee for a breach of the contract, until a re-sale shall have ascertained the deficit, although the vendee should instruct an attorney to draw a deed, and insert his name as purchaser. *Webster v. Hoban*, 399
4. A sale by authority of the captors, before sentence of condemnation, is affirmed by such sentence, and is good *ab initio*. *Williams v. Armroyd*, 423
5. See *Admiralty*, 5, 6, 7, 8, 423
6. If a factor purchase goods by order of his principal who dishonors the factor's bills for the amount thereof, the factor may sell the the goods without orders from the principal, and it shall not prejudice his right of action against the principal for the amount of such bills, damages and costs. *Riggs v. Lindsay*, 500

SEIZURE.

1. See *Admiralty*, 3, 112
2. See *Embargo*, 5, 113
3. See *Admiralty*, 20, 590

SET-OFF.

1. If three joint owners of a cargo employ the master of the ship to sell it for them, and he afterwards become interested in the share of one of the joint owners, he cannot, in an action brought against him by the three joint owners, set off his share of that amount. *Young v. Black*, 565
2. See *Account*, 3, 575

SLAVES.

See *Evidence*, 11, 12, 271, 290

SOVEREIGN.

See *Jurisdiction*, 6, 116

STATE COURT.

See *Jurisdiction*, 8, 279

STATUTE OF FRAUDS.

See *Fraud*, 3, 177

STAY OF PROCEEDINGS.

See *Mandamus*, 2, 577

SUPERSEDEAS.

See *Practice*, 15, 278

SURETY.

1. See *Evidence*, 8, 206
2. See *Bond*, 3, 572

T.

TENANT IN COMMON.

A tenant in common cannot maintain ejectment against his co-tenant without *actual ouster*. *Barnitz v. Cazey*, 457

TENNESSEE.

See *North Carolina*, 472

TERM.

See *Practice*, 16 277

TESTE.

See *Practice*, 16, 277

TITLE.

See *Land*, 1, 115

TRANSCRIPT.

See *Practice*, 4, 99

TRANS-SHIPMENT.

See *Embargo*, 2, 52

TRUST.

See *Credit, letter of* 6, 71

TRYERS.

See *Practice*, 20, 291

U.

UNITED STATES.

1. The United States are not bound by the declaration of their agent, made under a mistake of the fact, unless it clearly appear that the agent was acting within the scope of his authority, and was empowered, in his capacity of agent, to make such declaration. *Lee v. Munroe*, 366
2. Proceedings, in a case in which the United States are not a party, cannot be finally staid by the Court upon a suggestion that the interests of the United States are involved in the controversy. *Livingston v. Dorgenois*, 577
3. See *Bond*, 3, 572

USAGE OF TRDE.

See *Insurance*, 7, 9, 12, 16, 18.

V.

VALUE.

1. See *Embargo*, 6, 285
2. See *Bond*, 1, 287

VARIANCE.

1. See *Promissory note*, 2, 3, 4, 208
2. A variance is immaterial which does not change the nature of the contract. *Ferguson v. Harwood*, 409

VENDOR.

See *Sale*.

VERDICT.

1. See *Evidence*, 11, 271
2. See *Embargo*, 6, 285
3. See *Judgment*, 2, 434

VESSEL.

1. See *Fishing vessel*, 100

2. A public vessel of war of a foreign sovereign at peace with the United States coming into our ports and demeaning herself in a peaceable manner, is exempt from the jurisdiction of the country. *Schr. Exchange v. M'Faddon*, 117
3. See *Admiralty*, 13, 349

VIRGINIA.

1. See *Abatement*, 194
2. See *Limitations*, 3, 4, 202
3. See *Promissory note*, 2, 3, 4, 208
4. See *Dower*, 1, 2, 3, 4, 370
5. See *Alexandria*, 396
6. See *Consideration*, 2, 548

W.

WARRANTY.

See *Evidence*, 14, 308

WIDOW.

See *Dower*, 370

WITNESS.

The Principal obligor is not a competent witness for the surety. *Riddle v. Moss*, 206